

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

J & J Sports Productions, Inc.,

Case No.: 2:17-cv-02356-JAD-BNW

Plaintiff

V.

Gonzalez Brothers, Inc. d/b/a La Parranda Bar and Night Club and Jose R. Gonzalez, individually,

Order Granting Motion to Set Aside Dismissal Order

[ECF No. 20]

Defendants

9 J & J Sports Productions, Inc. filed this action in 2017 against defendants Jose R.
10 Gonzalez and Gonzalez Brothers, Inc. d/b/a La Parranda Bar and Night Club for broadcasting a
11 boxing match without paying J & J Sports a licensing fee.¹ By early 2019, J & J Sports had
12 obtained defaults against both defendants,² but I denied its motion for default judgment last
13 November because it was deficient.³ This case then languished without any proceeding of
14 record for more than 270 days, so on August 18, 2020, I ordered J & J to show cause why this
15 case should not be dismissed for want of prosecution under Local Rule 41-1, which authorizes
16 the court, on notice, to dismiss any case without any action for 270 days.⁴ That order warned
17 that “[f]ailure to show cause by this deadline will result in this case being dismissed for want of
18 prosecution and closed.”⁵

¹ ECF No. 1.

¶² ECF Nos. 12, 13.

³ ECF No. 16.

23|⁴ ECF No. 17 (minute order).

5 *Id.*

1 J & J did not file a response to that order to show cause, but it did file something: a
2 supplemental affidavit in support of its long-since-denied motion for default judgment.⁶ The
3 affidavit did not mention the order to show cause, it did not purport to show cause why this case
4 should not be dismissed, and it was not attached to a renewed motion for default judgment.
5 Because cause had not been shown, I dismissed this case without prejudice for want of
6 prosecution and closed it.⁷

7 The next day, plaintiff moved to set aside that dismissal order under Rule 60(b) of the
8 Federal Rules of Civil Procedure.⁸ Rule 60 allows a court to “relieve a party or its legal
9 representative from a final judgment, order, or proceeding.”⁹ Such a motion can be based on
10 Rule 60(b)(1), which permits a court to vacate an order for “mistake, inadvertence, surprise, or
11 excusable neglect.” To determine whether neglect is excusable, the court considers “at least four
12 factors” known as the *Pioneer-Briones* factors: “(1) the danger of prejudice to the opposing
13 party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for
14 the delay; and (4) whether the movant acted in good faith.”¹⁰

15 Plaintiff argues that all four of the *Pioneer-Briones* factors weigh in favor of granting it
16 relief from the dismissal order. It contends that the nine-month period of inaction in this case
17 “was mostly during the pandemic,” and its errors were more form than substance.¹¹ Although
18 these excuses are thin and only somewhat accurate, I find that the plaintiff has shown that these

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20⁶ ECF No. 18.

21⁷ ECF No. 19.

22⁸ ECF No. 20.

23⁹ Fed. R. Civ. P. 60(b).

¹⁰ *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (quoting *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000)).

¹¹ ECF No. 20 at 3.

1 factors weigh slightly in favor of finding excusable neglect to set aside the dismissal order, and I
2 give the plaintiff one final chance to file a ***complete and properly supported*** motion for default
3 judgment. However, I caution that, in light of the history of this case, further missteps will not
4 be overlooked or excused, and any future denial of the motion for default judgment will be with
5 prejudice.

6 IT IS THEREFORE ORDERED that the motion to set aside the dismissal order [ECF
7 **No. 20]** is GRANTED. The Clerk of Court is directed to set aside the dismissal order at
8 ECF No. 19. Plaintiff has until June 14, 2021, to file a complete and properly supported motion
9 for default judgment.

10 Dated: June 8, 2021

11 
12 U.S. District Judge Jennifer A. Dorsey

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